

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:15-cv-01333-ABJ**

URBAN AIR INITIATIVE, INC. et al v. ENVIRONMENTAL
PROTECTION AGENCY

Assigned to: Judge Amy Berman Jackson
Cause: 05:552 Freedom of Information Act

Date Filed: 08/17/2015

Jury Demand: None

Nature of Suit: 895 Freedom of
Information Act

Jurisdiction: U.S. Government Defendant

Plaintiff

URBAN AIR INITIATIVE, INC.

represented by **Adam R.F. Gustafson**
BOYDEN GRAY & ASSOCIATES
801 17th Street, NW
Suite 350
Washington, DC 20006
(202) 955-0620
Fax: (202) 955-0621
Email: gustafson@boydengrayassociates.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Adam Jeffrey White
BOYDEN GRAY & ASSOCIATES
801 17th Street, NW
Suite 350
Washington, DC 20006
(202) 955-0620
Fax: (202) 955-0621
Email: adam@boydengrayassociates.com
TERMINATED: 01/26/2017

Plaintiff

ENERGY FUTURE COALITION

represented by **Adam R.F. Gustafson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Adam Jeffrey White
(See above for address)
TERMINATED: 01/26/2017

V.

Defendant

GINA MCCARTHY

represented by **Kenneth A. Adebonojo**
U.S. ATTORNEY'S OFFICE FOR THE
DISTRICT OF COLUMBIA
555 Fourth Street, NW
Washington, DC 20530
(202) 252-2562
Fax: (202) 252-2599
Email: kenneth.adebonojo@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

John Cuong Truong
U.S. ATTORNEY'S OFFICE/DISTRICT
OF COLUMBIA
555 Fourth St, NW
Suite E 4204
Washington, DC 20530

(202) 252-2524
 Fax: (202) 252-2599
 Email: john.truong@usdoj.gov
 TERMINATED: 11/16/2017

Date Filed	#	Docket Text
08/17/2015	<u>1</u>	COMPLAINT against ENERGY FUTURE COALITION (Filing fee \$ 400 receipt number 0090-4212240) filed by URBAN AIR INITIATIVE, INC.. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Civil Cover Sheet, # <u>3</u> Declaration, # <u>4</u> Summons)(White, Adam) (Entered: 08/17/2015)
08/17/2015		Case Assigned to Judge Amy Berman Jackson. (sth) (Entered: 08/17/2015)
08/17/2015	<u>2</u>	SUMMONS (3) Issued Electronically as to ENVIRONMENTAL PROTECTION AGENCY, U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Summons)(sth) (Entered: 08/17/2015)
10/21/2015	<u>3</u>	NOTICE of Appearance by Adam R.F. Gustafson on behalf of All Plaintiffs (Gustafson, Adam) (Entered: 10/21/2015)
10/23/2015	<u>4</u>	Consent MOTION for Extension of Time to <i>Respond to Complaint</i> by ENVIRONMENTAL PROTECTION AGENCY (Truong, John) (Entered: 10/23/2015)
10/26/2015		MINUTE ORDER granting <u>4</u> Motion for Extension of Time. Defendant shall have until November 12, 2015 to respond to the complaint in this case. Signed by Judge Amy Berman Jackson on 10/26/2015. (lcabj2) (Entered: 10/26/2015)
10/28/2015		Set/Reset Deadlines: Defendant's Response to the Complaint is now due by 11/12/2015. (jth) (Entered: 10/28/2015)
11/12/2015	<u>5</u>	ANSWER to Complaint by ENVIRONMENTAL PROTECTION AGENCY.(Truong, John) (Entered: 11/12/2015)
11/13/2015	<u>6</u>	ORDER. Defendant shall file a dispositive motion or, in the alternative, a report setting forth the schedule for the completion of its production of documents to plaintiffs on or before December 11, 2015. Signed by Judge Amy Berman Jackson on 11/13/2015. (lcabj2) (Entered: 11/13/2015)
11/13/2015		Set/Reset Deadlines: Defendant's Dispositive Motion or, in the alternative, a report setting forth the schedule according to which it will complete its production of documents to Plaintiffs is due by 12/11/2015. (jth) (Entered: 11/13/2015)
12/11/2015	<u>7</u>	STATUS REPORT <i>and Document Production Schedule</i> by ENVIRONMENTAL PROTECTION AGENCY. (Truong, John) (Entered: 12/11/2015)
12/14/2015		MINUTE ORDER. In light of the representations contained in <u>7</u> defendant's status report and proposed production schedule, it is ORDERED that plaintiffs shall inform the Court of the grounds for their objections to the proposed schedule and provide specifics of what they would propose instead by noon on December 18, 2015. Signed by Judge Amy Berman Jackson on 12/14/2015. (lcabj2) (Entered: 12/14/2015)
12/14/2015		Set/Reset Deadlines: Plaintiffs' shall inform the Court of the grounds for their objections to Defendant's proposed schedule and provide specifics of what they would propose instead by 12:00 Noon on 12/18/2015. (jth) (Entered: 12/14/2015)
12/15/2015	<u>8</u>	RESPONSE re <u>7</u> Status Report <i>and Document Production Schedule</i> filed by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC.. (Attachments: # <u>1</u> Exhibit)(Gustafson, Adam) (Entered: 12/15/2015)
12/21/2015	<u>9</u>	ORDER REFERRING CASE for Mediation to Magistrate Judge Alan Kay. In light of the issues raised in the parties' recent filings regarding defendant's proposed production schedule, it is ORDERED that this matter is referred to Magistrate Judge Alan Kay for mediation purposes to commence on December 21, 2015. The parties shall file a report advising the Court of the status of the mediation by January 29, 2016. See Order for details. Signed by Judge Amy Berman Jackson on 12/21/2015. (lcabj2) (Entered: 12/21/2015)

12/21/2015		CASE DIRECTLY REFERRED to Magistrate Judge Alan Kay for Mediation. (sth) (Entered: 12/22/2015)
12/23/2015		Set/Reset Deadlines: The parties shall file a report advising the Court of the Status of the Mediation by 1/29/2016. (jth) (Entered: 12/23/2015)
12/23/2015		MINUTE ORDER: Settlement Conference set for 12/23/2015 at 02:00 PM in Chambers [room 2333] before Magistrate Judge Alan Kay. Signed by Magistrate Judge Alan Kay on 12/23/15. (DM) (Entered: 12/23/2015)
12/23/2015		Minute Entry for proceedings held before Magistrate Judge Alan Kay: Settlement Conference held on 12/23/2015. (DM) (Entered: 01/05/2016)
01/05/2016		Minute Entry for proceedings held before Magistrate Judge Alan Kay: Settlement Conference held on 1/5/2016. (DM) (Entered: 01/05/2016)
01/07/2016	<u>10</u>	STATUS REPORT <i>and Renewed Proposal for FOIA Production Schedule</i> by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC.. (Gustafson, Adam) (Entered: 01/07/2016)
01/11/2016		MINUTE ORDER. On December 21, 2015, the Court referred this matter for mediation and ordered that a joint status report be filed by January 29, 2016. <u>2</u> Order (Dec. 21, 2015). On January 7, 2016, plaintiff unilaterally submitted its own <u>10</u> status report instead. It is therefore ORDERED that defendant shall provide the Court with its current proposed schedule for the production of responsive records by January 12, 2016. Signed by Judge Amy Berman Jackson on 1/11/2016. (lcabj2) (Entered: 01/11/2016)
01/11/2016		Set/Reset Deadlines: Defendant shall provide the Court with its current proposed schedule for the production of responsive records by 1/12/2016. (jth) (Entered: 01/11/2016)
01/12/2016	<u>11</u>	STATUS REPORT <i>Pursuant to The Court's January 11, 2016 Minute Order</i> by GINA MCCARTHY. (Attachments: # <u>1</u> Exhibit A)(Truong, John) (Entered: 01/12/2016)
01/13/2016	<u>12</u>	REPLY re <u>11</u> Status Report filed by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC.. (Gustafson, Adam) (Entered: 01/13/2016)
01/13/2016		MINUTE ORDER. After consideration of all of the matters set forth in all of the pleadings, the Court will exercise its authority to supervise and oversee production, see <i>Citizens for Responsibility & Ethics in Washington v. FEC</i> , 711 F.3d 180, 189 (D.C. Cir. 2013), by issuing the following schedule. It is ORDERED that defendant shall review and produce responsive, non-exempt, and non-CBI records to plaintiffs on a rolling basis on January 15, 2016, January 29, 2016, February 15, 2016, and February 29, 2016, and it shall produce all responsive CBI records not entitled to confidential treatment by May 31, 2016. It is FURTHER ORDERED that of the more than 15,000 records that have already been identified, defendant shall review and produce responsive emails first. The law is clear that it is not improper for a party to utilize FOIA to obtain records from the government for use in litigation. See, e.g., <i>North v. Walsh</i> , 881 F.2d 1088, 1096 (D.C. Cir. 1989) (rejecting agency's contention that the plaintiff was improperly using FOIA "as an adjunct discovery device" and emphasizing that "[t]he plaintiff's rights in a FOIA action do not depend on his or her identity" as a private litigant). But since the related matter pending before the D.C. Circuit is a challenge to administrative action that will be decided based upon the administrative record, and even plaintiffs' proposed schedule would provide for the completion of production after the date the oral argument in that case is scheduled, the Court does not believe that the February 11 date has a significant bearing upon what the schedule of production in this case should be. The complaint alleges that there was a delay in initiating any production at all, and that delay prompted this law suit, so given the time that plaintiffs have been waiting, the material that is of most importance to the plaintiffs should be produced first. But since the defendant is now making diligent efforts to comply with its statutory obligations, and it has modified the schedule it originally proposed to set interim milestones that require two partial productions in January, the Court will not order the defendant to accelerate the pace of production further. Defendant shall submit reports to the Court updating it on the status of the rolling production on February 1, 2016, March 1, 2016, and June 1, 2016, and those reports should indicate the number of records reviewed, the number produced, and the number of any records withheld in full or in part. On June 13, 2016,

		the parties shall submit a joint status report identifying any issues that remain to be resolved and proposing a schedule for further proceedings, if any. The defendant is not obliged to prepare a Vaughn index or to submit materials related to the adequacy of the search pending further order of the Court. Finally, the mediation referral in this case is hereby terminated and the requirement of the January 29, 2016 status report set in the Court's January 11, 2016 Minute Order is vacated. SO ORDERED. Signed by Judge Amy Berman Jackson on 1/13/2016. (lcabj2) (Entered: 01/13/2016)
01/13/2016		Set/Reset Deadlines: Defendant shall submit Reports, updating the Court on the status of the rolling production on 2/1/2016, 3/1/2016, and 6/1/2016. Those reports should indicate the number of records reviewed, the number produced, and the number of any records withheld in full or in part. On 6/13/2016, the parties shall submit a Joint Status Report identifying any issues that remain to be resolved and Proposing a Schedule for further proceedings, if any.(jth) (Entered: 01/13/2016)
02/01/2016	<u>13</u>	STATUS REPORT by GINA MCCARTHY. (Truong, John) (Entered: 02/01/2016)
03/01/2016	<u>14</u>	STATUS REPORT by GINA MCCARTHY. (Truong, John) (Entered: 03/01/2016)
03/02/2016		MINUTE ORDER. Defendant shall submit a further status report on June 1, 2016, as outlined in the Court's Minute Order of January 13, 2016. Signed by Judge Amy Berman Jackson on 3/2/2016. (lcabj2) (Entered: 03/02/2016)
03/02/2016		Set/Reset Deadlines: Status Report due by 6/1/2016. (tb) (Entered: 03/02/2016)
05/20/2016	<u>15</u>	Unopposed MOTION for Extension of Time to <i>produce Plaintiff's records under the Freedom of Information Act</i> by GINA MCCARTHY (Truong, John) (Entered: 05/20/2016)
05/23/2016		MINUTE ORDER granting <u>15</u> Motion for Extension of Time. The schedule in place in this matter is hereby modified as follows: on or before May 25, 2016, defendant shall produce any records for which affected businesses have waived confidential treatment; on or before May 31, 2016, defendant shall complete its confidentiality business determinations associated with plaintiffs' FOIA request; on or before June 22, 2016, defendant shall produce any additional records not entitled to confidential treatment; on or before June 23, 2016, defendant shall submit a report to the Court updating it on the status of its production; and on or before July 5, 2016, the parties shall submit a joint status report identifying any issues that remain to be resolved. SO ORDERED. Signed by Judge Amy Berman Jackson on 5/23/2016. (lcabj2) (Entered: 05/23/2016)
05/24/2016		Set/Reset Deadlines: By 6/23/2016, Defendant shall submit a Report to the Court updating it on the Status of its Production; by 7/5/2016, the parties shall submit a Joint Status Report identifying any issues that remain to be resolved. (jth) (Entered: 05/24/2016)
06/23/2016	<u>16</u>	STATUS REPORT by GINA MCCARTHY. (Truong, John) (Entered: 06/23/2016)
07/05/2016	<u>17</u>	Joint STATUS REPORT by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC.. (Gustafson, Adam) (Entered: 07/05/2016)
07/05/2016		MINUTE ORDER. In consideration of <u>17</u> the parties' joint status report and their respective positions on the schedule to be imposed in this matter, it is ORDERED that defendant shall complete its review of the documents withheld pursuant to Exemption (b)(5) by July 15, 2016; defendant shall file its motion for summary judgment by August 19, 2016; plaintiffs shall file their combined opposition and cross-motion for summary judgment (with a single combined memorandum in support) by September 16, 2016; defendant shall file its combined reply and cross-opposition by October 14, 2016; and plaintiffs shall file their cross-reply by October 28, 2016. SO ORDERED. Signed by Judge Amy Berman Jackson on 7/5/2016. (lcabj2) (Entered: 07/05/2016)
07/06/2016		Set/Reset Deadlines: Defendant shall complete its review of the documents withheld pursuant to Exemption (b)(5) by 7/15/2016; Defendants Motion for Summary Judgment is due by 8/19/2016; Plaintiffs Combined Opposition and Cross-Motion for Summary Judgment (with a single combined memorandum in support) is due by 9/16/2016; Defendants Combined Reply and Cross-Opposition is due by 10/14/2016; Plaintiffs Cross-Reply is due by 10/28/2016. (jth) (Entered: 07/06/2016)

08/14/2016	<u>18</u>	Consent MOTION to Modify <i>July 5, 2016 Scheduling Order</i> by GINA MCCARTHY (Truong, John) (Entered: 08/14/2016)
08/15/2016		MINUTE ORDER granting <u>18</u> Motion to Modify. Defendant shall file its motion for summary judgment by September 2, 2016; plaintiffs shall file their combined opposition and cross-motion for summary judgment (with a single combined memorandum in support) by September 30, 2016; defendant shall file its combined reply and cross-opposition by October 28, 2016; and plaintiffs shall file their cross-reply by November 11, 2016. SO ORDERED. Signed by Judge Amy Berman Jackson on 8/15/2016. (lcabj2) (Entered: 08/15/2016)
08/15/2016		Set/Reset Deadlines: Defendants Motion for Summary Judgment is due by 9/2/2016; Plaintiffs Combined Opposition and Cross-Motion for Summary Judgment (with a single combined memorandum in support) is due by 9/30/2016; Defendants Combined Reply and Cross-Opposition is due by 10/28/2016; Plaintiffs Cross-Reply is due by 11/11/2016. (jth) (Entered: 08/15/2016)
09/02/2016	<u>19</u>	MOTION for Summary Judgment by GINA MCCARTHY (Attachments: # <u>1</u> Statement of Facts, # <u>2</u> Memorandum in Support, # <u>3</u> Declaration of Kathryn Sargeant, # <u>4</u> Exhs A to I, # <u>5</u> Exhs J to T, # <u>6</u> Exhs U to II, # <u>7</u> Exhs JJ to KK, # <u>8</u> Exhs LL to RR, # <u>9</u> Exh SS to WW, # <u>10</u> Exh XX, # <u>11</u> Vaughn Index (Exh HH), # <u>12</u> Declaration of Ronald Kalmbach)(Truong, John) (Entered: 09/02/2016)
09/22/2016	<u>20</u>	Consent MOTION for Extension of Time to <i>File a Combined Opposition to Defendant's Motion for Summary Judgment and Cross-Motion for Summary Judgment</i> by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC. (Gustafson, Adam) (Entered: 09/22/2016)
09/23/2016		MINUTE ORDER granting <u>20</u> Motion for Extension of Time. Plaintiffs shall file their combined opposition and cross-motion for summary judgment (with a single combined memorandum in support) by October 14, 2016; defendant shall file its combined reply and cross-opposition by November 17, 2016; and plaintiffs shall file their cross-reply by December 1, 2016. SO ORDERED. Signed by Judge Amy Berman Jackson on 9/23/2016. (lcabj2) (Entered: 09/23/2016)
09/23/2016		Set/Reset Deadlines: Plaintiffs shall file their combined Opposition and Cross-Motion for Summary Judgment (with a single combined memorandum in support) by 10/14/2016; Defendant shall file its combined Reply and Cross-Opposition by 11/17/2016; Plaintiffs shall file their Cross-Reply by 12/1/2016. (jth) (Entered: 09/23/2016)
10/14/2016	<u>21</u>	Cross MOTION for Partial Summary Judgment , by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Facts, # <u>3</u> Declaration)(Gustafson, Adam) Modified on 10/17/2016 (jf). (Entered: 10/14/2016)
10/14/2016	<u>23</u>	Memorandum in opposition to re <u>19</u> MOTION for Summary Judgment filed by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC.. (See Docket Entry <u>21</u> to view document). (znmw) (Entered: 10/17/2016)
10/15/2016	<u>22</u>	NOTICE of Filing of Exhibits by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC. re <u>21</u> MOTION for Leave to Appeal in forma pauperis MOTION to Appoint Counsel MOTION for Briefing Schedule MOTION to Permit Cross MOTION for Partial Summary Judgment MOTION for Limited Admission (Attachments: # <u>1</u> Exhibit Exhibits A-Q to Declaration of James R. Conde, # <u>2</u> Exhibit Exhibits R-BB to Declaration of James R. Conde)(Gustafson, Adam) (Entered: 10/15/2016)
11/02/2016	<u>24</u>	Unopposed MOTION for Extension of Time to <i>File Reply and Cross-Opposition</i> by GINA MCCARTHY (Truong, John) (Entered: 11/02/2016)
11/03/2016		MINUTE ORDER granting <u>24</u> Motion for Extension of Time. Defendant shall file its combined reply and cross-opposition by December 5, 2016, and plaintiffs shall file their cross-reply by December 20, 2016. SO ORDERED. Signed by Judge Amy Berman Jackson on 11/3/16. (lcabj2) (Entered: 11/03/2016)
11/04/2016		Set/Reset Deadlines: Defendant's Combined Reply and Cross-Opposition is due by 12/5/2016; Plaintiffs Cross-Reply is due by 12/20/2016. (jth) (Entered: 11/04/2016)

12/01/2016	<u>25</u>	Consent MOTION for Extension of Time to File Response/Reply <i>re November 3, 2016 Minute Order</i> by GINA MCCARTHY (Truong, John) Modified event title on 12/2/2016 (znmw). (Entered: 12/01/2016)
12/01/2016		MINUTE ORDER granting <u>25</u> Motion to Modify. Defendant shall file its combined reply and cross-opposition by December 22, 2016, and plaintiffs shall file their cross-reply by January 26, 2017. SO ORDERED. Signed by Judge Amy Berman Jackson on 12/1/16. (lcabj2) (Entered: 12/01/2016)
12/20/2016	<u>26</u>	Consent MOTION to Modify <i>December 1, 2016 Minute Order</i> by GINA MCCARTHY (Truong, John) (Entered: 12/20/2016)
12/20/2016		MINUTE ORDER granting <u>26</u> Motion to Modify. Defendant shall file its combined reply and cross-opposition by January 12, 2017, and plaintiffs shall file their cross-reply by February 16, 2017. SO ORDERED. Signed by Judge Amy Berman Jackson on 12/20/2016. (lcabj2) (Entered: 12/20/2016)
12/20/2016		Set/Reset Deadlines: Defendant's Combined Reply and Cross-Opposition is due by 1/12/2017; Plaintiffs Cross-Reply is due by 2/16/2017. (jth) (Entered: 12/20/2016)
01/10/2017	<u>27</u>	Unopposed MOTION to Modify <i>Dec. 20, 2016 Minute Order</i> by GINA MCCARTHY (Truong, John) (Entered: 01/10/2017)
01/11/2017		MINUTE ORDER granting <u>27</u> Motion to Modify. Defendant shall file its combined reply and cross-opposition by January 17, 2017, and plaintiffs shall file their cross-reply by February 21, 2017. SO ORDERED. Signed by Judge Amy Berman Jackson on 1/11/2017. (lcabj2) (Entered: 01/11/2017)
01/11/2017		Set/Reset Deadlines: Defendant's Combined Reply and Cross-Opposition is due by 1/17/2017; Plaintiffs Cross-Reply is due by 2/21/2017. (jth) (Entered: 01/11/2017)
01/17/2017	<u>28</u>	Memorandum in opposition to re <u>21</u> MOTION for Leave to Appeal in forma pauperis MOTION to Appoint Counsel MOTION for Briefing Schedule MOTION to Permit Cross MOTION for Partial Summary Judgment MOTION for Limited Admission filed by GINA MCCARTHY. (Attachments: # <u>1</u> Statement of Facts, # <u>2</u> Supplemental Declaration of Kathryn Sargeant, # <u>3</u> Sargeant Supp. Decl. Exhs 1-4)(Truong, John) (Entered: 01/17/2017)
01/17/2017	<u>29</u>	NOTICE re <u>28</u> of <i>Filing of Defendant's Response to Plaintiffs' Statement of Material Facts</i> by GINA MCCARTHY (Truong, John) Modified to add link on 1/18/2017 (znmw). (Entered: 01/17/2017)
01/17/2017	<u>30</u>	REPLY to opposition to motion re <u>19</u> MOTION for Summary Judgment (<i>See ECF Nos. 28 and 29 for supporting documentations</i>) filed by GINA MCCARTHY. (Truong, John) (Entered: 01/17/2017)
01/26/2017	<u>31</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC.. Attorney Adam Jeffrey White terminated. (White, Adam) (Entered: 01/26/2017)
02/15/2017	<u>32</u>	Consent MOTION for Extension of Time to File Response/Reply <i>to Defendant's Opposition to Plaintiffs' Cross-Motion For Summary Judgment</i> by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC. (Gustafson, Adam) (Entered: 02/15/2017)
02/16/2017		MINUTE ORDER granting <u>32</u> Motion for Extension of Time to File Response/Reply. Plaintiffs shall file their cross-reply by March 31, 2017. SO ORDERED. Signed by Judge Amy Berman Jackson on 2/16/2017. (lcabj2) (Entered: 02/16/2017)
03/31/2017	<u>33</u>	NOTICE OF ERRATA REGARDING THE DECLARATION OF JAMES R. CONDE SUBMITTED IN SUPPORT OF PLAINTIFFS OPPOSITION AND CROSS-MOTION FOR SUMMARY JUDGMENT by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC. re <u>21</u> MOTION for Leave to Appeal in forma pauperis MOTION to Appoint Counsel MOTION for Briefing Schedule MOTION to Permit Cross MOTION for Partial Summary Judgment MOTION for Limited Admission (Gustafson, Adam) (Entered: 03/31/2017)
03/31/2017	<u>34</u>	REPLY to opposition to motion re <u>21</u> MOTION for Leave to Appeal in forma pauperis MOTION to Appoint Counsel MOTION for Briefing Schedule MOTION to Permit

		Cross MOTION for Partial Summary Judgment MOTION for Limited Admission filed by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC.. (Attachments: # <u>1</u> Plaintiffs' Response to EPA's Second Statement of Material Facts as to Which There Are No Genuine Issues, # <u>2</u> Exhibits, # <u>3</u> Text of Proposed Order Granting Plaintiffs' Motion for Leave to File a Surreply)(Gustafson, Adam) (Entered: 03/31/2017)
06/05/2017	<u>35</u>	MOTION for Leave to File <i>Sur-Reply</i> by GINA MCCARTHY (Attachments: # <u>1</u> Sur-Reply Exh. 1)(Truong, John) (Entered: 06/05/2017)
06/05/2017		MINUTE ORDER granting <u>35</u> defendant's motion for leave to file sur-reply. The Clerk of Court is directed to docket defendant's <u>35</u> sur-reply. No further briefing from any party is required unless it is called for by the Court. SO ORDERED. Signed by Judge Amy Berman Jackson on 6/5/2017. (lcabj2) (Entered: 06/05/2017)
06/05/2017	<u>36</u>	SURREPLY to re <u>21</u> MOTION for Leave to Appeal in forma pauperis MOTION to Appoint Counsel MOTION for Briefing Schedule MOTION to Permit Cross MOTION for Partial Summary Judgment MOTION for Limited Admission filed by GINA MCCARTHY. (Attachments: # <u>1</u> Exhibit)(td) (Entered: 06/06/2017)
06/06/2017		MINUTE ORDER. The parties have informed chambers of a dispute that has arisen in the context of this FOIA case, which may also implicate ethical rules, related to a potentially privileged document. If they cannot resolve the matter among themselves, the parties may each file submissions outlining their respective positions by June 9, 2017. The submissions may not exceed five pages, and the Court will call for responses or a hearing if it deems either to be necessary. Signed by Judge Amy Berman Jackson on 6/6/17. (DMK) (Entered: 06/06/2017)
06/06/2017		Set/Reset Deadlines: Parties' submissions due by 6/9/2017. (kt) (Entered: 06/06/2017)
06/09/2017	<u>37</u>	SEALED MOTION FOR LEAVE TO FILE DOCUMENT UNDER SEAL filed by GINA MCCARTHY (This document is SEALED and only available to authorized persons.) (Attachments: # <u>1</u> Govt. Ex. 1)(Truong, John) (Entered: 06/09/2017)
06/09/2017	<u>38</u>	MOTION for "Claw Back" Inadvertently Disclosed Privileged Documents by GINA MCCARTHY (Attachments: # <u>1</u> Declaration of John C. Truong, # <u>2</u> Gov. Exh. 2, # <u>3</u> Gov. Exh. 3)(Truong, John) (Entered: 06/09/2017)
06/09/2017	<u>39</u>	RESPONSE re <u>38</u> MOTION for "Claw Back" Inadvertently Disclosed Privileged Documents filed by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC.. (Gustafson, Adam) (Entered: 06/09/2017)
06/12/2017		MINUTE ORDER granting <u>37</u> Sealed Motion for Leave to File Document Under Seal. The Clerk of Court is directed to file defendant's exhibit 1 [37-1] UNDER SEAL. SO ORDERED. Signed by Judge Amy Berman Jackson on 6/12/2017. (lcabj2) (Entered: 06/12/2017)
06/12/2017	<u>40</u>	SEALED DOCUMENT filed by GINA MCCARTHY. re Order on Sealed Motion for Leave to File defendant's exhibit 1 [37-1] Document Under Seal. (This document is SEALED and only available to authorized persons.)(ztd) (Entered: 06/12/2017)
06/23/2017	<u>41</u>	ORDER granting <u>38</u> defendant's motion for "claw back" of inadvertently disclosed privileged e-mail chain. It is hereby ORDERED that plaintiffs take the following steps: (1) destroy all copies of the inadvertently disclosed privileged documents, (2) make no use of the information contained in the April 19, 2017 email chain in this proceeding or otherwise, and (3) certify to the Court by July 5, 2017 that they have complied with this order. See Order for details. SO ORDERED. Signed by Judge Amy Berman Jackson on 6/23/2017. (lcabj2) (Entered: 06/23/2017)
06/27/2017		MINUTE ORDER. In order to assist the Court in making a responsible de novo determination, defendant is directed to deliver to chambers for in camera inspection, on or before July 11, 2017, a representative sample of documents it has withheld or redacted pursuant to Exemption 5. See Ray v. Turner, 587 F.2d 1187, 1195 (D.C. Cir. 1978). Defendant is ordered to provide the Court with five representative documents from each category identified in the declaration of James R. Conde, or all documents identified in the category if the category includes five or fewer documents. See Decl. of James R. Conde [Dkt. # 21-3] at 11-17. SO ORDERED. Signed by Judge Amy Berman Jackson on 6/27/2017. (lcabj2) (Entered: 06/27/2017)

07/05/2017	<u>42</u>	RESPONSE TO ORDER OF THE COURT re <u>41</u> Order on Motion for Miscellaneous Relief,,, Set/Reset Deadlines,, <i>CERTIFICATE OF COMPLIANCE WITH CLAW BACK ORDER</i> filed by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC.. (Gustafson, Adam) (Entered: 07/05/2017)
07/05/2017	<u>43</u>	MOTION to Modify <i>the In Camera Review Order</i> by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC. (Gustafson, Adam) (Entered: 07/05/2017)
07/06/2017		MINUTE ORDER granting <u>43</u> Motion to Modify. The Court encourages the parties to attempt to agree upon five representative documents in each category that contains more than five documents. However, if the parties cannot agree, then plaintiffs may identify three additional documents in each category. SO ORDERED. Signed by Judge Amy Berman Jackson on 7/6/2017. (lcabj2) (Entered: 07/06/2017)
07/11/2017	<u>44</u>	NOTICE of Compliance of June 27, 2017 Order by GINA MCCARTHY (Attachments: # <u>1</u> Exhibit)(Truong, John) (Entered: 07/11/2017)
08/29/2017		MINUTE ORDER. After reviewing defendant's Vaughn Index, plaintiffs discovered that EPA had not produced "some email attachments as non-responsive." See Pls.' Statement of Facts [Dkt. # 21-2] para. 40. On December 21, 2016, defendant justified not producing these email attachments on the grounds that it considered the attachments and emails to be separate "records" for FOIA purposes. Ex. 3 to Sargeant Suppl. Decl. [Dkt. # 28-3]; Am. Immigration Lawyers Assn v. Exec. Office for Immigration Review, 830 F.3d 667, 677 (D.C. Cir. 2016) ("Under FOIA, agencies instead in effect define a 'record' when they undertake the process of identifying records that are responsive to a request."). But, the parties acknowledge that on December 21, 2016, defendant produced 180 non-responsive documents to plaintiffs. See Pls.' Cross-Reply [Dkt. # 34] at 4; Def.'s Sur-Reply [Dkt # 36]; Ex. 3 to Sargeant Suppl. Decl. [Dkt. # 28-3]. These documents are allegedly email attachments that are non-responsive to plaintiffs' FOIA request, but were attached to emails that are responsive to the request. In their cross-reply, plaintiffs still seek summary judgment on "all remaining email attachments redacted as non-responsive." Cross-Reply at 5. In its sur-reply, defendant does not address whether its December 21 production included all allegedly non-responsive email attachments or just a sub-set. See generally Def.'s Sur-Reply. Because the Court has an obligation to determine if a live controversy exists before it, defendant must inform the Court whether its production consisted of all allegedly non-responsive email attachments, making this portion of plaintiffs' motion moot, by September 1, 2017. See Transwestern Pipeline Co. v. FERC, 897 F.2d 570, 575 (D.C. Cir. 1990) ("A case is moot if events have so transpired that the decision will neither presently affect the parties' rights nor have a more-than-speculative change of affecting them in the future."). If the December production only included a sub-set of the set of email attachments originally not produced on the grounds that they were not responsive, defendant must provide a supplemental declaration stating the number of email attachments that have not been produced because they are non-responsive, and the basis for any differentiation between the attachments that were released and those that have not been produced. SO ORDERED. Signed by Judge Amy Berman Jackson on 8/29/2017. (lcabj2) (Entered: 08/29/2017)
09/01/2017	<u>45</u>	RESPONSE TO ORDER OF THE COURT <i>Response to the Court's August 29, 2017 Order</i> by GINA MCCARTHY (Truong, John) Modified event title on 9/5/2017 (znmw). (Entered: 09/01/2017)
09/01/2017	<u>46</u>	REPLY re <u>45</u> Response to Order of the Court re Minute Order <i>Reply Concerning the Court's August 29, 2017 Minute Order</i> filed by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC.. (Gustafson, Adam) Modified to add link on 9/5/2017 (znmw). (Entered: 09/01/2017)
09/01/2017		MINUTE ORDER. Given defendant's stated intention to process any email attachments previously withheld as non-responsive, the agency has to produce any remaining documents, or identify an exemption justifying their withholding, by September 8, 2017. SO ORDERED. Signed by Judge Amy Berman Jackson on 9/1/2017. (lcabj2) (Entered: 09/01/2017)
09/07/2017	<u>47</u>	Consent MOTION for Extension of Time to <i>Respond to the Court's September 1, 2017 Order</i> by GINA MCCARTHY (Truong, John) (Entered: 09/07/2017)

09/08/2017		MINUTE ORDER granting <u>47</u> Motion for Extension of Time. Given defendant's stated intention to process any email attachments previously withheld as non-responsive, the agency has to produce any remaining documents, or identify an exemption justifying their withholding, by September 15, 2017. SO ORDERED. Signed by Judge Amy Berman Jackson on 9/8/2017. (lcabj2) (Entered: 09/08/2017)
09/15/2017	<u>48</u>	RESPONSE TO ORDER OF THE COURT re Order on Motion for Extension of Time to,, Set/Reset Deadlines, filed by GINA MCCARTHY. (Attachments: # <u>1</u> Gov. Exh. A, # <u>2</u> Gov. Exh. B)(Truong, John) (Entered: 09/15/2017)
09/20/2017	<u>49</u>	REPLY re Order on Motion for Extension of Time to,, Set/Reset Deadlines, <i>Reply Concerning the Court's September 8, 2017 Minute Order</i> filed by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Gustafson, Adam) (Entered: 09/20/2017)
09/25/2017	<u>50</u>	ORDER. Pursuant to Federal Rule of Civil Procedure 56, and for the reasons stated in the accompanying Memorandum Opinion, it is hereby ORDERED that defendant's <u>19</u> motion for summary judgment is GRANTED IN PART AND DENIED IN PART, and plaintiffs' <u>21</u> cross-motion for partial summary judgment is DENIED. Because EPA's declaration does not describe an adequate search in response to plaintiffs' FOIA request, the matter is remanded to the agency to conduct a further search for responsive records, to provide a more detailed justification for the adequacy of the searches, and to release any reasonably segregable non-exempt material to plaintiffs consistent with FOIA. The parties shall file a joint status report by November 27, 2017, to update the Court on whether further proceedings are necessary in this matter. While the matter is on remand, the parties are ORDERED to meet and confer in an effort to respond to plaintiffs' contention that EPA "is still withholding 17 attachments that it erroneously claims to have previously released in full or in part." Resp. to Court's Order [Dkt. # 48] at 1. The agency is hereby ORDERED to produce any of the e-mail attachments it has yet to produce, and it must provide the Court with an updated declaration indicating that it has done so when it reports to the Court on the status of the renewed search. See Order for details. SO ORDERED. Signed by Judge Amy Berman Jackson on 9/25/2017. (lcabj2) (Entered: 09/25/2017)
09/25/2017	<u>51</u>	MEMORANDUM OPINION. Signed by Judge Amy Berman Jackson on 9/25/2017. (lcabj2) (Main Document 51 replaced on 9/25/2017) (zjth). (Entered: 09/25/2017)
10/03/2017	<u>52</u>	MOTION to Clarify <i>the Court's September 25, 2017 Order</i> by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Gustafson, Adam) (Entered: 10/03/2017)
10/04/2017		MINUTE ORDER denying <u>52</u> Motion to Clarify. The Vaughn index prepared by defendant EPA revealed that the agency had withheld attachments to responsive emails, and it characterized those attachments in the index as "non-responsive." See Pls.' Statement of Facts [Dkt. # 21-2] para. 40. On December 21, 2016, defendant justified its failure to produce these email attachments with the explanation that it considered the attachments and emails to be separate "records" for FOIA purposes. Ex. 3 to Sargeant Suppl. Decl. [Dkt. # 28-3]. In the course of the summary judgment briefing, plaintiffs pressed their position that the records should be produced, see Pls.' Cross-Mem. [Dkt. # 21] at 27-28; Pls.' Cross-Reply [Dkt. # 34] at 20-22, but since defendant agreed to produce the material, see Def.'s Consent Mot. for Extension of Time [Dkt. # 47]; Resp. to Court's Order [Dkt. # 48], the Court ruled that the issue was moot. Mem. Op. [Dkt. # 51] at 11 n.6. Plaintiffs dedicated only one page of their combined memorandum to this issue, but they have since filed three additional submissions on the matter, including the instant motion. In the absence of a live controversy, there is no basis for the Court to issue an advisory opinion concerning the manner in which the records were originally labelled, and there is nothing ambiguous about the Court's order that the records be produced. SO ORDERED. Signed by Judge Amy Berman Jackson on 10/4/2017. (lcabj2) (Entered: 10/04/2017)
11/16/2017	<u>53</u>	NOTICE OF SUBSTITUTION OF COUNSEL by Kenneth A. Adebonojo on behalf of All Defendants Substituting for attorney John C. Truong (Adebonojo, Kenneth) (Entered: 11/16/2017)
11/27/2017	<u>54</u>	Joint STATUS REPORT by <i>Environmental Protection Agency and</i> by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC.. (Gustafson, Adam) (Entered: 11/27/2017)

12/12/2017		MINUTE ORDER. The parties shall file another joint status report by January 19, 2018. Defendant should proceed with the renewed search in accordance with the Court's <u>51</u> memorandum opinion. Defendant will be expected to justify any limits it imposes on the time period to be searched or the number of potential custodians conducting a search with the new terms when it is called upon to establish the adequacy of the search in the future. SO ORDERED. Signed by Judge Amy Berman Jackson on 12/12/2017. (lcabj2) (Entered: 12/12/2017)
12/12/2017		Set/Reset Deadlines: Joint Status Report due by 1/19/2018. (tg) (Entered: 12/12/2017)
01/19/2018	<u>55</u>	Joint STATUS REPORT by <i>Environmental Protection Agency and by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC..</i> (Gustafson, Adam) (Entered: 01/19/2018)
01/22/2018		MINUTE ORDER. Defendant must produce responsive, non-exempt, non-CBI records on a rolling basis on February 16, 2018, March 16, 2018, and April 13, 2018, and it must file a status report concerning the status of the rolling productions on April 16, 2018. Defendant must produce records found not entitled to confidential treatment by July 6, 2018. And defendant must file a status report on August 3, 2018. Further, plaintiffs must file a status report indicating whether they are seeking any further action by the Court with respect to the 17 documents by February 9, 2018. SO ORDERED. Signed by Judge Amy Berman Jackson on 1/22/2018. (lcabj2) (Entered: 01/22/2018)
02/09/2018	<u>56</u>	STATUS REPORT by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC.. (Attachments: # <u>1</u> Exhibit A)(Gustafson, Adam) (Entered: 02/09/2018)
02/12/2018		MINUTE ORDER. Defendant must file a status report in response to <u>56</u> plaintiffs' status report by February 16, 2018. SO ORDERED. Signed by Judge Amy Berman Jackson on 2/12/2018. (lcabj2) (Entered: 02/12/2018)
02/14/2018	<u>57</u>	Consent MOTION for Extension of Time to <i>Submit Status Report</i> by GINA MCCARTHY (Adebonojo, Kenneth) (Entered: 02/14/2018)
02/15/2018		MINUTE ORDER granting <u>57</u> Motion for Extension of Time. Defendant must file a status report in response to <u>56</u> plaintiffs' status report by March 2, 2018. SO ORDERED. Signed by Judge Amy Berman Jackson on 2/15/2018. (lcabj2) (Entered: 02/15/2018)
03/05/2018	<u>58</u>	STATUS REPORT by <i>Defendant</i> by GINA MCCARTHY. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit)(Adebonojo, Kenneth) (Entered: 03/05/2018)
04/16/2018	<u>59</u>	STATUS REPORT by GINA MCCARTHY. (Adebonojo, Kenneth) (Entered: 04/16/2018)
04/17/2018		MINUTE ORDER. The parties must file a joint status report by May 1, 2018 informing the Court whether any further proceedings are necessary, and including a proposed schedule if necessary. SO ORDERED. Signed by Judge Amy Berman Jackson on 4/17/2018. (lcabj2) (Entered: 04/17/2018)
04/17/2018		Set/Reset Deadlines: Joint Status Report due by 5/1/2018 and proposed schedule if necessary. (tb) (Entered: 04/17/2018)
05/01/2018	<u>60</u>	Consent MOTION for Extension of Time to <i>File the Parties' Joint Status Report</i> by GINA MCCARTHY (Adebonojo, Kenneth) (Entered: 05/01/2018)
05/02/2018		MINUTE ORDER granting <u>60</u> Motion for Extension of Time. The parties must file a joint status report by May 8, 2018 informing the Court whether any further proceedings are necessary, and including a proposed schedule if necessary. SO ORDERED. Signed by Judge Amy Berman Jackson on 5/2/2018. (lcabj2) (Entered: 05/02/2018)
05/08/2018	<u>61</u>	Joint STATUS REPORT by GINA MCCARTHY. (Adebonojo, Kenneth) (Entered: 05/08/2018)
05/09/2018		MINUTE ORDER. Defendant shall file its motion for summary judgment by August 13, 2018; plaintiffs shall file their opposition by September 13, 2018; and defendant

		shall file its reply by October 4, 2018. SO ORDERED. Signed by Judge Amy Berman Jackson on 5/9/2018. (lcabj2) (Entered: 05/09/2018)
08/13/2018	<u>62</u>	Consent MOTION for Extension of Time to <i>File Defendant's Motion for Summary Judgment</i> by GINA MCCARTHY (Adebonojo, Kenneth) (Entered: 08/13/2018)
08/13/2018		MINUTE ORDER granting <u>62</u> Motion for Extension of Time. Defendant shall file its motion for summary judgment by September 28, 2018; plaintiffs shall file their opposition by October 29, 2018; and defendant shall file its reply by December 21, 2018. SO ORDERED. Signed by Judge Amy Berman Jackson on 8/13/2018. (lcabj2) (Entered: 08/13/2018)
09/27/2018	<u>63</u>	Consent MOTION for Extension of Time to <i>File Defendant's Motion for Summary Judgment</i> by GINA MCCARTHY (Adebonojo, Kenneth) (Entered: 09/27/2018)
09/28/2018		MINUTE ORDER granting <u>63</u> Motion for Extension of Time. Defendant shall file its motion for summary judgment by October 29, 2018; plaintiffs shall file their opposition by November 30, 2018; and defendant shall file its reply by December 21, 2018. SO ORDERED. Signed by Judge Amy Berman Jackson on 9/28/2018. (lcabj2) (Entered: 09/28/2018)
10/29/2018	<u>64</u>	MOTION for Extension of Time to <i>File Defendant's Motion for Summary Judgment</i> by GINA MCCARTHY (Adebonojo, Kenneth) (Entered: 10/29/2018)
10/30/2018		MINUTE ORDER granting <u>64</u> Motion for Extension of Time. Notwithstanding plaintiff's objection, which is noted, defendant must file its motion for summary judgment by November 30, 2018. Plaintiff's opposition must be filed by December 21, 2018, and defendant's reply must be filed by January 7, 2019. SO ORDERED. Signed by Judge Amy Berman Jackson on 10/30/2018. (lcabj2) (Entered: 10/30/2018)
11/30/2018	<u>65</u>	MOTION for Extension of Time to <i>File Defendant's Motion for Summary Judgment</i> by GINA MCCARTHY (Adebonojo, Kenneth) (Entered: 11/30/2018)
12/03/2018		MINUTE ORDER granting <u>65</u> Motion for Extension of Time. Notwithstanding plaintiff's objection, which is noted, defendant must file its motion for summary judgment by December 4, 2018. Plaintiff's opposition must be filed by December 28, 2018, and defendant's reply must be filed by January 11, 2019. SO ORDERED. Signed by Judge Amy Berman Jackson on 12/3/2018. (lcabj2) (Entered: 12/03/2018)
12/04/2018	<u>66</u>	MOTION for Summary Judgment by GINA MCCARTHY (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Facts, # <u>3</u> Exhibit)(Adebonojo, Kenneth) (Entered: 12/04/2018)
12/27/2018	<u>67</u>	MOTION for Extension of Time to File Response/Reply as to <u>66</u> MOTION for Summary Judgment by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC. (Gustafson, Adam) (Entered: 12/27/2018)
12/28/2018		MINUTE ORDER granting <u>67</u> Motion for Extension of Time. Plaintiffs must file their opposition to defendant's motion for summary judgment <u>66</u> by January 11, 2019. Defendant must file its reply by January 25, 2019. SO ORDERED. Signed by Judge Amy Berman Jackson on 12/28/2018. (lcabj2) (Entered: 12/28/2018)
01/10/2019	<u>68</u>	MOTION for Extension of Time to <i>File Plaintiffs' Opposition to Summary Judgment</i> by ENERGY FUTURE COALITION, URBAN AIR INITIATIVE, INC. (Gustafson, Adam) (Entered: 01/10/2019)